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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 **ELIZABETH SANFILIPPO,**

12 **Plaintiff,**

13 **vs.**

14 **TINDER, INC. and DOES 1 through**
20, Inclusive,

15 **Defendants.**
16

CASE NO. 2:18-cv-08372 AB (JEMx)

**REPLY MEMORANDUM IN
SUPPORT OF MOTION TO
REMAND**

DATE: November 30, 2018
TIME: 10:00 a.m.
PLACE: Courtroom 7B
First Street Courthouse
350 West First Street
Los Angeles, CA 90012

Hon. André Birotte Jr.
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1 I. OVERVIEW

2 It is the plaintiff's prerogative to decide whom to sue. Real v. St. Jude Med.,
 3 Inc., 2017 U.S. Dist. LEXIS 47081, *12 (C.D. Cal. 2017) ("The Court is not aware
 4 of any authority that permits St. Jude Cardiology to unilaterally substitute itself as
 5 the defendant in place of another separate and distinct legal entity.") Here, Elizabeth
 6 Sanfilippo chose to sue Tinder, with whom she had entered into an employment
 7 agreement. Match Group has injected itself into this case, without producing any
 8 employment contract between Sanfilippo and Match Group. The only employment
 9 agreement in this case is between Sanfilippo and Tinder.

10 "[A] state statute extending the life of a dissolved corporation for the
 11 purposes of being sued also preserves the corporation as a citizen of the state of
 12 incorporation for the purpose of determining diversity citizenship." Ripalda v. Am.
 13 Operations Corp., 977 F.2d 1464, 1468 (D.C. Cir. 1992); Johnson v. Smithkline
 14 Beecham Corp., 724 F.3d 337, 358-59 (3d Cir. 2013). "We have held that when
 15 such a state statute renders a dissolved corporation 'sufficiently alive to sue,' the
 16 corporation also retains its citizenship for purposes of diversity jurisdiction."
 17 Johnson v. Smithkline Beecham Corp., 724 F.3d 337, 358-59 (3d Cir. 2013). A
 18 defunct corporation is a citizen of both its state of incorporation and its last principal
 19 place of business. China Basin Properties, Ltd. v. Allendale Mut. Ins. Co., 818
 20 F.Supp. 1301, 1305 (N.D. Cal. 1992).

21 The logic of the merger cases cited by Match is that the former entity "ceases
 22 to exist." Such is not the case here. Here, Tinder may be dissolved but it is still
 23 operating. To this day, Tinder operates out of its offices in West Hollywood,
 24 California. Tinder continues to litigate and has not "ceased" operations in its wind
 25 up mode.

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1 In Sellers v. Kohlberg & Co., Ltd. Liab. Co., 2001 U.S. Dist. LEXIS 9498, at
2 *11-12 (N.D. Cal. June 29, 2001), the Northern District Court granted the plaintiff's
3 motion to remand because the defendant corporation retained its connections to
4 California.

5
6 BAF is a citizen of California because its local character has not
7 been lost by the passage of time. A review of the facts indicate that
8 BAF retained local connections despite ceasing operations in April
9 1999. Prior to that time, California was BAF's principal and active
10 place of business. BAF operated more than a dozen stores in
11 California and its headquarters and offices were located in
12 California.

13
14 The District Court also noted that the corporation maintained its connection to
15 California through its president.

16
17 In addition, BAF's president had a business address in
18 California, was listed as agent for service of process, and was served
19 with the complaint herein California. The president also admitted
20 that some books and records pertaining to the former activities of
21 BAF remained in California, although substantially all of them had
22 been transferred to New York (Harter Decl. P 9). It appears,
23 therefore, that BAF still has an extant connection with California.

24
25 Id. at 12. Similarly in this case, Tinder operates out of its offices in West
26 Hollywood. Tinder's key officers, including the Chief Executive Officer, all work
27 out of Tinder's West Hollywood office.

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1 The District Court in Exp.-Import Bank of Korea v. ASI Corp., 2017 U.S.
2 Dist. LEXIS 182960, at *4 (C.D. Cal. June 13, 2017), notes that corporations
3 dissolved by a merger may be sued for up to three years.

4
5 Under settled Delaware law, "corporate existence is terminated
6 on the date of merger," and "a corporation ceases to exist on merger
7 for all purposes" Beals v. Washington Int'l, Inc., 386 A.2d 1156,
8 1161 (Del. Ch. 1978); see also Del. Code tit. 8, § 259. Delaware law
9 allows for such dissolved corporations to be sued for up to three
10 years after dissolution. See Del. Code tit. 8, § 278.

11
12 Similarly in United States v. Blue Diamond Corp., 1960 U.S. Dist. LEXIS
13 4761, at *1 (N.D. Cal. Mar. 10, 1960), the Northern District Court of California held
14 that a lawsuit may be maintained against a corporation dissolved by a reason of
15 merger.

16
17 Defendant Blue Diamond Corporation was on May 11, 1959,
18 before this action was filed, merged into The Flintkote Company. It
19 is this defendant's contention that this action filed subsequent to the
20 merger can not be maintained under the laws of the State of
21 Delaware, the state of incorporation of Blue Diamond Corporation.

22 This court is of the opinion that the discussion to be found in
23 United States v. Line Material Co., 202 F.2d 929 (C.C.A.6th), in
24 reference to the interpretation of the corporation laws of the State of
25 Delaware indicating that a civil suit would continue even though
26 against a corporation dissolved by reason of merger, is sound.

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1 In Moran v. Wells Fargo Bank, N.A., 2012 U.S. Dist. LEXIS 108813, at *13
2 (D. Nev. Aug. 3, 2012), the District Court of Nevada held that, post merger, the
3 dissolving corporation retains its citizenship, notwithstanding merger.

4
5 United Title was a corporation incorporated under Nevada law
6 until it was dissolved by merger. (Pet. for Removal (#1) at 3).
7 Dissolved Nevada corporations remain citizens of Nevada for at least
8 two years after dissolution. See McManus v. McManus Fin.
9 Consultants, Inc., 2010 U.S. Dist. LEXIS 113455, 2010 WL
10 4290866, at **4-5, (D. Nev. 2010). Defendants have failed to show
11 that United Title has been dissolved for more than two years and
12 have not presented any facts that would suggest foreign citizenship.
13 United Title is therefore a Nevada citizen.

14 15 **II. LEGAL ANALYSIS**

16 A corporation's principal place of business must be identified regardless of
17 whether the corporation is defunct. See W. M. Passalacqua Builders, Inc. v. Resnick
18 Developers S., Inc., 933 F.2d 131, 141 (2d Cir. 1991). This rule ensures that federal
19 jurisdiction will not be extended to corporations to which Congress had no intention
20 of providing the benefit. Id.

21 Under Delaware law, a dissolved corporation continues to exist for three
22 years to prosecute and defend lawsuits.

23
24 All corporations, whether they expire by their own limitation or
25 are otherwise dissolved, shall nevertheless be continued, for the term
26 of 3 years from such expiration or dissolution or for such longer
27 period as the Court of Chancery shall in its discretion direct, bodies
28 corporate for the purpose of prosecuting and defending suits,

whether civil, criminal or administrative, by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities and to distribute to their stockholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized.

Delaware General Corporation Law Section 278. The Delaware rule authorizing suit within three years after dissolution is remedial in nature and must be liberally construed. See International Pulp Equip. Co. v. St. Regis Kraft Co., 54 F.Supp. 745 (D. Del. 1944).

Courts have held that a defunct corporation is a citizen of both its state of incorporation and its last principal place of business. See China Basin Properties, Ltd. v. Allendale Mut. Ins. Co., 818 F.Supp. 1301, 1305 (N.D. Cal. 1992) (“Since there is nothing in section 1332 to suggest that a corporation's principal place of business should be ignored once that corporation becomes inactive, a strict reading of the statute requires this Court to utilize One Pass' last principal place of business in determining its citizenship.”); Sanderson v. Brooks, 2013 U.S. Dist. LEXIS 93909, *15 (C.D. Cal. July 3, 2013) (holding that the citizenship of an inactive corporation is both its state of incorporation and its last active principal place of business); Sellers v. Kohlberg & Co., Ltd. Liab. Co., 2001 U.S. Dist. LEXIS 9498, *6 (N.D. Cal. June 29, 2001) (an inactive corporation’s principal place of business is where “it last transacted business”).

“In a suit involving a subsidiary corporation, the court looks to the state of incorporation and principal place of business of the subsidiary, not the parent.” Danjaq, S.A. v. Pathe Communications Corp., 979 F.2d 772, 775 (9th Cir. 1992).

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1 **III. CONCLUSION**

2 This action should be remanded to the Los Angeles Superior Court.

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4 DATED: November 16, 2018

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7 By /s/ JOHN A. BELCHER
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